

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 180

Introduced by Hilgert, 7; Connealy, 16

Read first time January 4, 2001

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-302.01, 48-310,
2 48-731, 48-733, 48-2111, and 48-2114, Reissue Revised
3 Statutes of Nebraska, and sections 48-303 and 48-446,
4 Revised Statutes Supplement, 2000; to change provisions
5 relating to child employment certificates, worker safety
6 programs, and the Boiler Inspection Act contractor
7 registration; to harmonize provisions; to repeal the
8 original sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-302.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 48-302.01. Sections ~~Section~~ 48-302 and 48-310 shall not
4 be construed to apply to the employment of any child:

5 (1) Solely ~~selely~~ as a caddy on any golf course or place
6 where golf is played; or

7 (2) Who is at least twelve but less than sixteen years of
8 age outside of school hours during the months of June, July, or
9 August in the removal of weeds, off-type and rogue plants, and corn
10 tassels, in hand pollinating, and in any other engagement in hand
11 labor in the production of seed. The employer shall obtain the
12 written consent of a parent of the child or a person standing in
13 loco parentis to the child for the child to be so employed. This
14 subdivision applies only to children domiciled within seventy-five
15 miles of the location where the labor is to be performed.

16 Sec. 2. Section 48-303, Revised Statutes Supplement,
17 2000, is amended to read:

18 48-303. Except as provided otherwise in this section, an
19 An employment certificate shall be approved only by the
20 superintendent of the primary high school district in which the
21 child resides or by a person authorized by him or her in writing
22 or, when there is no superintendent, by a person authorized by the
23 school district officers, except that no school district officer or
24 other person authorized by this section may approve such
25 certificate for any child then in or about to enter his or her own
26 employment or the employment of a firm or corporation of which he
27 or she is a member, officer, or employee or in whose business he or
28 she is interested. If a child does not attend school in Nebraska

1 but seeks to work in Nebraska, the Department of Labor may approve
2 the employment certificate. The officer or person approving such
3 certificate may administer the oath provided for therein or in any
4 investigation or examination necessary for the approval thereof.
5 No fee shall be charged for approving any such certificate or for
6 administering any oath or rendering any services related thereto.
7 The school board or board of education of each school district
8 approving the employment certificate, or the department if the
9 department has approved the employment certificate, shall establish
10 and maintain proper records where copies of all such certificates
11 and all documents connected therewith shall be filed and preserved
12 and shall provide the necessary clerical services for carrying out
13 sections 48-302 to 48-313. The person who issued the employment
14 certificate shall report to the ~~Department of Labor~~ department any
15 complaint concerning the conditions of employment of a child for
16 whom a certificate is in force. Upon receipt of the report the
17 ~~Department of Labor~~ department shall make such investigation as it
18 deems advisable to protect an individual child or to promote the
19 youth-work program.

20 Sec. 3. Section 48-310, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-310. No person under the age of sixteen years shall
23 be employed or suffered to work in any employment as defined in
24 section 48-301 more than forty-eight hours in any one week, nor
25 more than eight hours in any one day, nor before the hour of 6 in
26 the morning, nor after the hour of 8 in the evening if the child is
27 under the age of fourteen, nor after the hour of 10 in the evening
28 if such child is between the ages of fourteen and sixteen. The

1 person issuing the work certificate may limit or extend the stated
2 hour in individual cases by endorsement on the certificate, except
3 a child shall only be permitted to work after the hour of 10 p.m.
4 if there is no school scheduled for the following day and, if he or
5 she is between fourteen and sixteen years of age, he or she has
6 consented to such extension by signing his or her name on the
7 endorsement extension, and his or her employer has obtained a
8 special permit from the Department of Labor. ~~The Department of~~
9 ~~Labor~~ department may issue a special permit to allow employment of
10 such child beyond 10 p.m. upon being satisfied, after inspection
11 of the working conditions, of ~~and~~ the safety, healthfulness, and
12 general welfare to the child of the business premises. The special
13 permit may be issued for periods not to exceed ninety days and may
14 be renewed. The department may require reinspection prior to the
15 renewal of the special permit. ~~only after reinspection.~~ The fee
16 for each permit or renewal shall be established by rule and
17 regulation of the Commissioner of Labor, and all money so collected
18 by the commissioner shall be remitted to the State Treasurer who
19 shall credit the funds to the General Fund. Every employer shall
20 post in a conspicuous place in every room where such children are
21 employed a printed notice stating the hours required of them each
22 day, the hours of commencing and stopping work, and the time
23 allowed for meals. The printed form of such notice shall be
24 furnished by the ~~Department of Labor~~ department.

25 Sec. 4. Section 48-446, Revised Statutes Supplement,
26 2000, is amended to read:

27 48-446. (1) There is hereby created the Workplace Safety
28 Consultation Program. It is the intent of the Legislature that

1 such program help provide employees in Nebraska with safe and
2 healthful workplaces.

3 (2) Under the Workplace Safety Consultation Program, the
4 Department of Labor may conduct workplace inspections and
5 consultations to determine whether employers are complying with
6 standards issued by the federal Occupational Safety and Health
7 Administration or the federal Mine Safety and Health Administration
8 for safe and healthful workplaces. Workplace inspections and
9 safety consultations shall be performed by employees of the
10 Department of Labor who are knowledgeable and experienced in the
11 occupational safety and health field and who are trained in the
12 federal standards and in the recognition of safety and health
13 hazards. The Department of Labor may employ qualified persons as
14 may be necessary to carry out this section.

15 (3) All employers shall be subject to occupational safety
16 and health inspections covering their Nebraska operations.
17 Employers shall be selected by the Commissioner of Labor for
18 inspection on the basis of factors intended to identify the
19 likelihood of workplace injuries and to achieve the most efficient
20 utilization of safety personnel of the Department of Labor. Such
21 factors shall include:

22 (a) The amount of premium paid by the employer for
23 workers' compensation insurance;

24 (b) The experience modification produced by the
25 experience rating system referenced in section 44-7524;

26 (c) Whether the employer is covered by workers'
27 compensation insurance under section 48-146.01;

28 (d) The relative hazard of the employer's type of

1 business as evidenced by insurance rates or loss costs filed with
2 the Director of Insurance for the insurance rating classification
3 or classifications applicable to the employer;

4 (e) The nature, type, or frequency of accidents for the
5 employer as may be reported to the Department of Insurance, the
6 Nebraska Workers' Compensation Court, or the Department of Labor;

7 (f) Workplace hazards as may be reported to the
8 Department of Insurance, the Nebraska Workers' Compensation Court,
9 or the Department of Labor;

10 (g) Previous safety and health history;

11 (h) Possible employee exposure to toxic substances;

12 (i) Requests by employers for the Department of Labor to
13 inspect their workplaces or otherwise provide consulting services
14 on a basis by which the employer will reimburse the Department of
15 Labor; and

16 (j) All other relevant factors.

17 (4) Hazards identified by an inspection shall be
18 eliminated within a reasonable time as specified by the
19 Commissioner of Labor.

20 (5) An employer who refuses to eliminate workplace
21 hazards in compliance with an inspection shall be referred to the
22 federal Occupational Safety and Health Administration or the
23 federal Mine Safety and Health Administration for enforcement.

24 (6) At the discretion of the Commissioner of Labor,
25 inspection of an employer may be repeated to ensure compliance by
26 the employer, with the expenses incurred by the Department of Labor
27 to be paid by the employer.

28 (7) The Commissioner of Labor shall adopt and promulgate

1 rules and regulations establishing a schedule of fees for
2 consultations and inspections. Such fees shall be established with
3 due regard for the costs of administering the Workplace Safety
4 Consultation Program. The cost of consultations and inspections
5 shall be borne by each employer for which these services are
6 rendered.

7 (8) There is hereby created the Workplace Safety
8 Consultation Program Cash Fund. All fees collected pursuant to the
9 Workplace Safety Consultation Program shall be remitted to the
10 State Treasurer for credit to the fund and shall be used for the
11 sole purpose of administering the program. Any money in the fund
12 available for investment shall be invested by the state investment
13 officer pursuant to the Nebraska Capital Expansion Act and the
14 Nebraska State Funds Investment Act.

15 (9) Each employer provided a consultation or inspection
16 by the Department of Labor shall retain up-to-date records for each
17 place of employment as recommended by the inspection or
18 consultation. The employer shall make such records available to
19 the Department of Labor upon request to ensure continued progress
20 of the employer's efforts to comply with the federal Occupational
21 Safety and Health Administration or the federal Mine Safety and
22 Health Administration standards.

23 (10) Any person who knowingly operates or causes to be
24 operated a business in violation of recommendations to correct
25 serious or imminent hazards as identified by the Workplace Safety
26 Consultation Program shall be referred to the federal Occupational
27 Safety and Health Administration or the federal Mine Safety and
28 Health Administration.

1 (11) The Attorney General, acting on behalf of the
2 Commissioner of Labor, or the county attorney in a county in which
3 a business is located or operated may apply to the district court
4 for an order against any employer in violation of this section.

5 (12) The Workplace Safety Consultation Program shall not
6 be construed to alter the duty of care or the liability of an owner
7 or a business for injuries or death of any person or damage to any
8 property. The state and its officers and employees shall not be
9 construed to assume liability arising out of an accident involving
10 a business by reason of administration of the Workplace Safety
11 Consultation Program.

12 (13) Inspectors employed by the Department of Labor may
13 inspect any place of employment with or without notice during
14 normal hours of operation. Such inspectors may suspend the
15 operation of equipment determined to constitute an imminent danger
16 situation. Operation of such equipment shall not resume until the
17 hazardous or unsafe condition is corrected to the satisfaction of
18 the inspector.

19 (14) No person with a reasonable cause to believe the
20 truth of the information shall be subject to civil liability for
21 libel, slander, or any other relevant tort cause of action by
22 virtue of providing information without malice on workplace hazards
23 or the nature, type, or frequency of accidents to the Department of
24 Insurance, the Nebraska Workers' Compensation Court, or the
25 Department of Labor.

26 (15) Safety and health inspectors employed by the
27 Department of Labor shall have the right and power to enter any
28 premise, building, or structure, public or private, for the purpose

1 of inspecting any work area or equipment. A refusal by the
2 employer of entry by a safety and health inspector employed by the
3 Department of Labor shall be a violation of this subsection. If
4 the Commissioner of Labor finds, after notice and hearing, that an
5 employer has violated this subsection, he or she may order payment
6 of a civil penalty of not more than one thousand dollars for each
7 violation. Each day of continued violation shall constitute a
8 separate violation.

9 (16) The Commissioner of Labor shall adopt and promulgate
10 rules and regulations to carry out this section.

11 Sec. 5. Section 48-731, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-731. (1)(a) The Division of Safety and Labor
14 Standards of the Department of Labor may issue a special inspector
15 commission to an inspector in the employ of a company if the
16 inspector has previously passed the examination prescribed by the
17 National Board of Boiler and Pressure Vessel Inspectors and the
18 company is an insurance company authorized to insure boilers in
19 this state against loss from explosion.

20 (b) Each insurance company which has been issued a
21 special inspector commission under this section shall submit to the
22 state boiler inspector complete data of each boiler required to be
23 inspected by the Boiler Inspection Act which is insured by such
24 company on forms approved by the commissioner. If the insurance
25 company fails to reinspect any boiler within forty-five days after
26 the expiration of the certificate of inspection previously issued
27 for such boiler, the state boiler inspector may inspect such boiler
28 and the insurance company shall be liable for the cost of such

1 inspection. The fee for such inspection shall be determined in
2 accordance with the schedule of fees for such inspections
3 established by rules and regulations adopted and promulgated by the
4 commissioner.

5 (c) Insurance companies shall notify the division of new,
6 canceled, or suspended risks relating to insured boilers.
7 Insurance companies shall notify the division of all boilers which
8 the company insures, or any boiler for which insurance has been
9 canceled, not renewed, or suspended within thirty days after such
10 action.

11 (d) Insurance companies shall notify the division of
12 defective boilers. If a special inspector, upon the first
13 inspection of new risk, finds that the boiler or any of the
14 appurtenances are in such condition that the inspector's company
15 refuses insurance, the company shall submit a report of the defects
16 to the state boiler inspector.

17 (2) The inspection required by the act shall not be made
18 if (a) an annual inspection is made under a city ordinance which
19 meets the standards set forth in the act, (b) a certificate of
20 inspection of the boiler is filed with the commissioner with a
21 certificate fee, and (c) the inspector for the city making such
22 inspection is required by such ordinance to either hold a
23 commission from the National Board of Boiler and Pressure Vessel
24 Inspectors commensurate with the type of inspections performed by
25 the inspector for the city or acquire the commission within twelve
26 months after appointment.

27 (3) The commissioner may, by rule and regulation, provide
28 for the issuance of a special inspector commission to an inspector

1 in the employ of a company using or operating an unfired pressure
2 vessel subject to the act for the limited purpose of inspecting
3 unfired pressure vessels used or operated by such company.

4 (4) All inspections made by a special inspector shall be
5 performed in accordance with the act, and a complete report of such
6 inspection shall be filed with the division in the time, manner,
7 and form prescribed by the commissioner.

8 (5) The state boiler inspector may, at his or her
9 discretion, inspect any boiler to which a special inspector
10 commission applies.

11 (6) The commissioner may, for cause, suspend or revoke
12 any special inspector commission.

13 Sec. 6. Section 48-733, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 48-733. ~~The~~ Except as provided in subdivision (1)(b) of
16 section 48-731, the owner or user of a boiler required to be
17 inspected under the Boiler Inspection Act or inspected by request
18 of the boiler owner shall pay a fee for such inspection or
19 inspections in accordance with the rules and regulations adopted
20 and promulgated by the commissioner. Any boiler required to be
21 inspected by the act may be inspected by the state boiler inspector
22 if the owner or his or her agent makes written request to the state
23 boiler inspector. Fees will be imposed as required for services in
24 support of the act in accordance with rules and regulations adopted
25 and promulgated by the commissioner.

26 Sec. 7. Section 48-2111, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 48-2111. The commissioner shall serve notice of

1 revocation on the contractor by mailing such notice by certified
2 mail or any other manner of delivery by which the United States
3 Postal Service can verify delivery to the address of the contractor
4 or the contractor's registered agent listed in the application.
5 Upon a showing of compliance with the application requirements set
6 out in section 48-2105, the commissioner may temporarily reinstate
7 the registration pending a hearing on the revocation. A
8 registration revoked under this section shall not be permanently
9 reinstated. To receive a new registration number, the contractor
10 shall reapply to the commissioner.

11 Sec. 8. Section 48-2114, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-2114. (1) The commissioner shall issue a citation to
14 a contractor when an investigation reveals that the contractor has
15 violated:

16 (a) The requirement that the contractor be registered; or

17 (b) The requirement that the contractor's registration
18 information be substantially complete and accurate.

19 (2) If a citation is issued, the commissioner shall
20 notify the contractor ~~by certified mail~~ of the proposed
21 administrative penalty, if any, by certified mail or any other
22 manner of delivery by which the United States Postal Service can
23 verify delivery. The administrative penalty shall be not more than
24 five hundred dollars in the case of a first violation and not more
25 than five thousand dollars in the case of a second or subsequent
26 violation.

27 (3) The contractor shall have fifteen working days from
28 the date of the citation or penalty to contest such citation or

1 penalty. Notice of contest shall be sent to the commissioner who
2 shall provide a hearing pursuant to the Administrative Procedure
3 Act.

4 Sec. 9. Original sections 48-302.01, 48-310, 48-731,
5 48-733, 48-2111, and 48-2114, Reissue Revised Statutes of Nebraska,
6 and sections 48-303 and 48-446, Revised Statutes Supplement, 2000,
7 are repealed.

8 Sec. 10. Since an emergency exists, this act takes
9 effect when passed and approved according to law.